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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re A. R., a Person Coming Under the  
Juvenile Court Law.

B208109  
(Los Angeles County  
Super. Ct. No. CK64651)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

P. J.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County.  
S. Patricia Spear, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County  
Counsel, and O. Raquel Ramirez, Deputy County Counsel, for Plaintiff and Respondent.

P. J. (mother) appeals from the juvenile court's order terminating jurisdiction over A. R. (A.), her daughter born February 2000, and placing her in the custody of her father (father) , subject to further order of the family court. (See Welf. & Inst. Code, § 362.4; undesignated section references are to that code.) Appellant contends the court erred in finding no need for continued judicial supervision, and in failing to find regarding the reasonableness of reunification services offered to mother. We find neither contention persuasive, and affirm the order terminating jurisdiction.

## **FACTS**

### *1. Prior Proceedings.*

We previously reviewed proceedings in this case on mother's appeal from the dispositional order. (*In re Amber R.* (Feb. 13, 2008, B197579) [nonpub. opn.].) Drawing from that decision, of which we have taken judicial notice, we summarize the proceedings that it considered.

A. is the sole child of her parents, who divorced in 2001. In 2006 she was in their joint custody, but resided primarily with mother. In August 2006, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition under section 300, alleging that A. had been placed at substantial risk of emotional harm (*id.*, subd. (c)) by mother's making numerous false statements accusing father of sexually abusing A.

The detention report stated that mother's claims, to DCFS and law enforcement, had subjected A. to repeated abuse interviews and examinations. Mother also had resisted family preservation services. Following a hearing, the court on October 13, 2006 ordered A. detained and released to father, with mother allowed unmonitored visits. However, those visits became monitored a month later, after mother, in violation of a previous court order, left father a message, in A.'s presence, accusing him of emotionally abusing A. At the detention hearing, the dependency investigator testified that she and the case worker had both provided mother with referrals for personal counseling, but mother had provided no documentation of attending any program.

Mother submitted to the petition and the court sustained it, under section 300, subdivision (c). Before the March 2007 disposition hearing, the court received a lengthy psychological evaluation, which concluded that mother had features of both narcissism and paranoid personality disorder. A previous report, prepared for the family court in 2004, characterized mother as immature, and stated that her control of A. served as a defense from feeling dominated by father. Both reports opined mother should receive therapy.

At the disposition hearing, the court found substantial danger to A's health, that there was no reasonable means to protect her without removal from mother's custody, and that DCFS had made reasonable efforts to prevent such removal. Care and custody of A. were ordered taken from mother, and she was placed with DCFS, for placement at father's home. The court added, "What I need mom to do is to be in therapy with a licensed psychotherapist." A. was to continue with her own therapy, which father also was undergoing.

Appellant appealed from the disposition order, arguing the absence of substantial evidence that removal from her custody was the only reasonable way to protect A. We affirmed the order.

## *2. Proceedings Following Disposition.*

In preparation for a status review hearing on April 23, 2007, DCFS reported that A. had changed schools, and had adjusted well, having many new friends and liking her teacher. A. had also changed therapists, and a progress letter from the new therapist had been requested.

Mother and A. had enjoyed weekly, monitored visits, without incident. Mother, however, had not enrolled in therapy, although DCFS had sent her lists of low-fee agencies in her area.

As for father, he had completed parenting classes, and continued to attend weekly individual therapy. A letter from his psychiatrist stated that father had been responding

well. Father reported harassing communications by mother at work, extending back several years, and stated he wanted a restraining order.

DCFS concluded that father was in full compliance with the court's order, but that mother, not having enrolled in counseling or attended parenting class, was not. She had, however, been prepared, affectionate, and stimulating to A. at the visits. DCFS concluded that "A[.] is safe in the home of her father, and there is no longer any need for DCFS intervention." DCFS recommended termination of jurisdiction.

At the hearing, the court noted it was not its practice to terminate jurisdiction while, as here, an appeal was pending. The court was pleased with A.'s situation, which it characterized as now a permanent living arrangement, and the court stated its goal to be termination of jurisdiction, perhaps with a family law order (§ 362.4).

Mother's counsel averred that mother had enrolled in a therapy program; the court stated that if so, that would constitute partial compliance with the case plan. The court reiterated that mother had to be in therapy with a licensed therapist. The court found that reasonable services had been provided to mother. A further review hearing was set for October 10, 2007.

Before that date, DCFS reported that since the previous hearing DCFS had provided family preservation services to father, his resident girlfriend, and A., including family counseling. The three had completed these services successfully, leading to their termination in July 2007. Father had taken a few months off from his therapy, because he couldn't afford it, but he had resumed, and the therapist reported his progress to be good.

A.'s teacher had recently told the social worker that A. had displayed problematic behavior that might have an organic source. For example, A. had eaten mud at a playground, had thrown water on a custodian, and displayed poor motor coordination and eye contact. So advised, father opined that this behavior stemmed from the trauma of domestic conflict and mother's previous emotional abuse of A.

A. had continued to attend weekly therapy, and the therapist reported that A. participated actively, addressing issues of trust and safety, anxiety, fears about being

controlled, and learning to control herself. The therapist did not indicate any organic developmental concerns.

With regard to mother's therapy, the social worker had informed her that the therapist she was seeing did not qualify under the court's order, as she was a trainee, not a licensed therapist. At the same time, the worker provided mother further referrals for such a therapist. Having previously stated she could not afford one, mother more recently had reported that she soon would be able to, and that she had enrolled.

Mother's visits with A. had continued smoothly. However, on one occasion A. reported that mother had told her to say bad things about father to the social worker. Mother denied this. Although family reunification services had been provided, mother had not complied with any court-ordered services, in that she had failed until recently to engage in licensed therapy. Father had complied fully with his required services.

DCFS concluded that mother had not resolved the issues that led to A. being detained out of her care. DCFS opined there would be a very high risk of further emotional abuse were A. now returned to mother. Resolution of the issues posing this risk would require two years of weekly therapy. DCFS characterized the situation as "tragic," because A. and mother shared a strong affectionate bond, and mother possessed strengths as a parent. But without therapy, the risk of emotional abuse would outweigh these considerations. DCFS recommended termination of jurisdiction, with a family law order granting father full physical and legal custody, with weekly monitored visits by mother.

At the hearing, the court again ruled that it could not terminate jurisdiction while the appeal remained pending. The court set a further hearing for December 12, under section 366.22 with respect to mother, and requested a report of her progress in therapy, which she stated she had begun. In response to A.'s desire to enjoy longer visits with mother, the court authorized DCFS to extend the monitored visits or increase them to two per week. DCFS also was ordered to continue providing mother family reunification services. The court declared return to father to be the permanent plan.

On December 12, 2007, DCFS filed both a standard report and an addendum, stating that the social worker had spoken to mother's therapist the day before. The therapist had stated that mother had not attended therapy since October, because of financial difficulties, but she did have an appointment scheduled for January 3, 2008. The DCFS's report recognized "no changes," and referred to mother's continuing failure to take responsibility for emotionally abusive behavior.

Mother was not present in court on December 12. At her counsel's request, the court set a contested hearing for February 4, 2008. For that date, DCFS's submission simply stated that there was no new information to report. At the hearing, the court first observed that it could not terminate jurisdiction because the case was still on appeal. (The appeal was decided nine days later.) A.'s attorney requested another hour per week of visitation with mother; the court directed that DCFS could work that out with mother's therapist and father. Mother having had a new attorney appointed, the court adjourned the contested hearing to April 7, 2008. The court ordered a supplemental report concerning visitation and the status of mother's participation in therapy.

For the April 7 hearing, DCFS again simply reported no new information. At the hearing, mother's attorney explained that mother had been financially able to see a licensed therapist for two months, until October 2007, and counsel wanted the content of that therapy documented to the court. None of the referrals mother had been provided would allow her to see a licensed therapist on a sliding scale, only a supervised intern. DCFS's attorney responded that mother should have sought more referrals, and that DCFS had done all that it could.

Father requested termination of jurisdiction, with a family law order. The court opined that where the 18-month point has passed, "whether or not reasonable services have really been provided becomes a little bit moot . . . ." A.'s counsel noted that if jurisdiction were relinquished there would be no one to monitor visitation, but the court replied that that was not sufficient reason to retain jurisdiction. Given the evaluations by father's and A.'s therapists, the court considered termination appropriate. It suggested

that if mother could make progress with a new therapist, sufficient for the family court, she could obtain modification. The court adjourned the matter until April 23, to permit preparation of the order and arrival of the appellate remmittur.

On April 23, 2008, the court continued the case to permit mother and father to evaluate the professional monitors each had proposed. On April 29, the court entered a family law order, terminating jurisdiction. A visitation schedule, with a specified monitor, was included. Mother objected to termination of jurisdiction, on grounds she should have been allowed to work towards unmonitored visitation or shared custody. The court stated that she could advance those matters with the family court.

Mother then filed this appeal.

## **DISCUSSION**

### *1. The Governing Statute.*

The court below repeatedly stated that the various review hearings were being conducted under section 364, which applies where, under the jurisdictional or dispositional order, “the child is not removed from the physical custody of his or her parent or guardian.” (§ 364, subd. (a).) Mother contends, however, that this section was not apposite, inasmuch as A. had been removed from mother’s custody. Rather, according to mother, the jurisdictional issue should have been reviewed under section 361.2, which governs when the court places the child with a parent with whom he or she was not residing when the events arose that brought the child within court’s jurisdiction. (§ 361.2, subd. (a).) (See *In re Janee W.* (2006) 140 Cal.App.4th 1444, 1451.)

Because this question involves the proper characterization and structural underpinning of the proceedings, DCFS’s contention that mother forfeited the issue by not objecting below does not govern. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) Moreover, DCFS’s argument that section 361.2 did not apply because father previously had joint custody of A. do not correspond with the element of the section, that the parent be one with whom the child was not residing.

Ultimately, however, mother's claim that the proceedings should have been conducted under section 361.2, not 364, is inconsequential. Mother's argument is that in deciding whether to relinquish jurisdiction, the court should have assessed whether its continued supervision was necessary. Yet section 364 calls for such an evaluation (*id.*, subds. (b)-(d)), and the record reflects that the court performed it. It is the propriety of that resolution to which mother concretely objects.

## *2. The Jurisdictional Decision.*

Mother argues that termination of jurisdiction was not in accord with substantial evidence (see *In re N. S.* (2002) 97 Cal.App.4th 167, 172), because of three claimed factors: A's history of emotional instability, father's parenting skills having been characterized as lacking, and the "volatile" relationship between mother and father. We evaluate these concerns in turn.

Mother stresses that at the beginning of this case, in September and October of 2006, A. was evaluated as suffering from emotional disturbance. That was the reason for intervention. But, as appellant further notes, by the time of the disposition in March 2007, A.'s second therapist reported an absence of emotional problems. Although mother characterizes these assessments as being at odds, the therapist's March 2007 observation corresponded to A.'s situation, as described by DCFS in the same report: "A[.] continues to flourish in her father's home."<sup>1</sup>

Ultimately, mother's position is that A. suffered emotional disturbance before the assumption of jurisdiction, and that the dramatic, later change in her condition was not convincingly established. We believe, however, that the continual positive appraisals following those on which mother relies reflect a palpable, sustained improvement in A.'s emotional condition.

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<sup>1</sup> Mother also refers to the teacher report of unusual behaviors by A. This report did not, however, cite or purport to diagnose any emotional instability.



Mother's argument with regard to father's parenting is similar. She notes that before the case, and in a report not long after its initiation, father's parenting skills were characterized negatively. The latter report, however, stated that father would be immediately referred to counseling and parent education. And, as mother directly concedes, "Father has apparently made significant progress in this area by attending counseling and parenting classes." In the face of the more recent record, mother's comment is that father's therapist's reports do not affirmatively show that father has overcome his previous parenting deficiency. But DCFS's reports indicate that he has. Once again, mother has focused on an out-of-date condition, which she argues impairs confidence in an unbroken showing of progress and improvement.

The final factor mother contends points against termination of jurisdiction is the claimed likelihood that mother and father's "dysfunctional relationship will continue to impact A." But mother points to nothing in the record that supports this expectation. And the last reported instance of A.'s exposure to inter-parental hostility involved mother's behavior at a visitation, which would continue to be subject to monitoring under the present decision.

We conclude that mother failed to establish a need for continuing judicial supervision. As manifested in DCFS's repeated calls for termination, the conditions of which mother complains were effectively rectified, both before and at the time of the termination order. That order was soundly supported.

Mother poses a final contention, that in terminating jurisdiction the court should have made a finding regarding the reasonableness of reunification services provided to her. However, in *In re Janee W.*, *supra*, 140 Cal.App.4th at pages 1453-1455, we held that reasonable reunification services are not required in a proceeding, under section 361.2, in which the child is placed with another parent. That being so, neither is a finding required with respect to such services.

**DISPOSITION**

The order under review is affirmed.

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O'NEILL, J.\*

We concur:

RUBIN, Acting P. J.

BIGELOW, J.

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\* Judge of the Ventura Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.